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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

AMAZON.COM, INC.,

Defendant.

Case No. 2:23-cv-0932

**JOINT MOTION FOR ENTRY OF
ORDER RESOLVING PLAINTIFF'S
MOTION FOR LEAVE TO
TEMPORARILY SEAL THE
COMPLAINT AND MOTION TO
DESEQUESTER AND
PERMANENTLY SEAL
REFERENCES TO NONPUBLIC
INVESTIGATIONS**

NOTE ON MOTION CALENDAR:
Monday, July 3, 2023

Pursuant to Local Rule 5(g), 15 U.S.C. § 57b-2(b)(3)(C), and 16 C.F.R. § 4.10(g), Plaintiff Federal Trade Commission ("Plaintiff" or "FTC") and Defendant Amazon.com, Inc. ("Defendant" or "Amazon") jointly move the Court for an Order resolving the FTC's Motion for Leave to Temporarily Seal the Complaint and Motion to Desequester and Permanently Seal References to Nonpublic Investigations (the "Original Motion"; Dkt. #2). In support of this Joint Motion, Plaintiff and Defendant state as follows:

JOINT MOTION FOR LEAVE TO
TEMPORARILY SEAL
Case No. 2:23-cv-0932

Federal Trade Commission
600 Pennsylvania Avenue N.W.
Washington, D.C. 20580
(202) 326-3320

1 1. On June 23, 2023, the FTC filed under seal unredacted versions of its Complaint
2 (Dkt. #3), and Attachments A-N and P thereto, and its Motion to Desequester Documents
3 Clawed Back by Defendant (Dkt. #4), and its Exhibit A (collectively, the “Sealed Filings”).

4 2. As stated in the Original Motion, the FTC is not permitted to publicly file
5 information received from Defendant or third parties in response to compulsory process until the
6 FTC has provided Defendant and all the third-party submitters “an opportunity to seek an
7 appropriate protective or *in camera* order.” 16 C.F.R. § 4.10(g).

8 3. In the Sealed Filings, the FTC filed under seal information obtained from
9 Defendant and third-party submitters. In order to afford Defendant and third-party submitters an
10 opportunity to seek a protective order, or permanent sealing order, under 16 C.F.R. § 4.10, the
11 FTC sought leave to temporarily seal the Sealed Filings (Dkt. #2).

12 4. The Court may seal judicial records when a party shows a compelling reason to
13 keep information out of the public view. *Kamakana v. City & County of Honolulu*, 447 F.3d
14 1172, 1178 (9th Cir. 2006). “What constitutes a ‘compelling reason’ is ‘best left to the sound
15 discretion of the trial court.’” *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1097
16 (9th Cir. 2016) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 599 (1978)).

17 5. Plaintiff and Defendant agree that there is compelling reason for entry of the
18 attached Proposed Order, which maintains a temporary seal over the Sealed Filings, while
19 allowing Defendant and third-party submitters until July 17, 2023 to file a motion to permanently
20 seal any portion of the Sealed Filings. In particular, under Local Rule 5(g)(3)(B), such a
21 temporary seal protects “legitimate private or public interests,” and no “less restrictive
22 alternative” exists, because the procedure agreed upon by the parties allows for efficient
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1 resolution of Defendant or any other submitters' effort to keep materials sealed. Additionally,
 2 Amazon contends it risks suffering competitive harm if it is not afforded this opportunity to
 3 protect from public disclosure the confidential information it provided to the FTC. *See Nixon*,
 4 435 U.S. at 598 (recognizing that "business information that might harm a litigant's competitive
 5 standing" may appropriately be kept under seal) (citing cases).

6 6. Plaintiff and Defendant also agree, for the reasons stated in the Original Motion
 7 (Dkt. #2 at 5-6) that there is compelling reason to keep references in the Sealed Filings to
 8 nonpublic FTC investigations under seal.

9 7. Plaintiff and Defendant also have agreed to negotiate a stipulated protective order,
 10 or submit separate versions of proposed protective orders, on or before July 24, 2023. That order
 11 will address, going forward, how to handle information produced in discovery and information
 12 produced to the FTC in its investigation.

13 **LOCAL RULES 7(g)(3)(A), 7(e) CERTIFICATION**

14 Pursuant to Local Rule 7(g)(3)(A), undersigned counsel certify that they met and
 15 conferred to reach the agreement described in this Joint Motion. Among other efforts, the
 16 following attorneys conferred by phone on July 3, 2023: Evan Mendelson, Olivia Jerjian, and
 17 Thomas Maxwell Nardini (representing the FTC), and Laura Flahive Wu, John Graubert, and
 18 Stephen Anthony (representing Defendant).

19 Undersigned counsel also certify that this memorandum contains 533 words, in
 20 compliance with the Local Civil Rules.
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 23

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2 Dated: July 3, 2023

/s/ Evan Mendelson

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**pro hac vice applications forthcoming*

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